



ORDINANCE NO. 7.84

AN ORDINANCE OF THE TOWN OF LARKSPUR, COLORADO, APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE WATER SYSTEM IMPROVEMENTS; AUTHORIZING THE EXECUTION OF A BOND TO EVIDENCE THE INDEBTEDNESS OF THE LOAN AND A LOAN AGREEMENT SETTING FORTH THE REPAYMENT AND OTHER TERMS THEREOF; AND PROVIDING FOR PAYMENT OF THE LOAN.

WHEREAS, the Town of Larkspur, Douglas County, Colorado (the "Town") is a municipal corporation duly organized and operating as a home rule Town under Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the Town (the "Town Charter"); and (unless otherwise indicated, capitalized terms used in the recitals hereof shall have the respective meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the Town is the owner and operator of a public water system, which system has historically been operated on a self-supporting basis by the Town; and

WHEREAS, pursuant to Section 8.01 of the Town Charter, the Town may borrow money and issue revenue bonds evidencing such indebtedness; and

WHEREAS, at an election of the Town held on the 6th day of November, 2012 (the "Election"), a majority of the registered and qualified electors of the Town voting at such Election approved Ballot Issue T-01 authorizing the issuance of debt by the Town and imposition of a mill levy of 5 mills for the purpose of paying (in combination with other legally available revenue of the Town) such debt, the text of such ballot question being as follows:

SHALL THE TOWN OF LARKSPUR DEBT BE INCREASED \$2,970,000, WITH A REPAYMENT COST OF UP TO \$5,126,460, AND SHALL TOWN TAXES BE INCREASED BY UP TO \$35,000.00 ANNUALLY (FIRST FULL FISCAL YEAR DOLLAR INCREASE IN 2013) AND THEREAFTER BY SUCH ADDITIONAL AMOUNTS AS MAY BE GENERATED BY THE IMPOSITION OF AN ADDITIONAL 5 MILL PROPERTY TAX LEVY FOR THE PURPOSE OF: FINANCING THE COSTS OF THE DESIGN, ENGINEERING, PERMITTING, ACQUISITION, INSTALLATION AND CONSTRUCTION OF A DOMESTIC WATER SUPPLY WELL IN THE ARAPAHOE AQUIFER, INCLUDING BUT NOT LIMITED TO THE WELL, WELL CASING, PUMP(S), TREATMENT FACILITY, COLLECTION AND TRANSMISSION LINES, STORAGE TANK, MEASURING AND CONTROL DEVICES, AND RELATED IMPROVEMENTS, TOGETHER WITH NECESSARY LAND AND EASEMENTS; SUCH DEBT TO CONSIST OF LOANS, BONDS, OR OTHER CONTRACTUAL OBLIGATIONS AND FUNDING SOURCES APPROVED BY THE TOWN COUNCIL, WHICH SHALL BEAR INTEREST AT A MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 4% PER ANNUM, BUT MAY INCLUDE

THE ABILITY TO PREPAY SUCH LOAN OR OTHER OBLIGATION, SUCH DEBT TO BE PAYABLE FROM AD VALOREM PROPERTY TAXES (TAXES BASED ON THE ASSESSED VALUE OF PROPERTY AS DETERMINED BY THE COUNTY), WATER SERVICE FEES, OR OTHER LEGALLY AVAILABLE REVENUES OF THE TOWN, AND THE ACTUAL AMOUNT OF SUCH DEBT TO BE ISSUED OR INCURRED TO BE DETERMINED BY THE TOWN COUNCIL AT THE TIME OF ISSUANCE OR INCURRENCE THEREOF (BUT NOT IN EXCESS OF \$2,970,000) TAKING INTO ACCOUNT ANY GRANTS THEN OBTAINED BY THE TOWN FOR THE PURPOSES OF THIS PROJECT; SUCH TAXES TO CONSIST OF AD VALOREM PROPERTY TAXES TO BE LEVIED IN ANY YEAR IN SUCH AMOUNT AS MAY BE NECESSARY TO PAY THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON SUCH DEBT, AS THE SAME BECOME DUE, BUT NOT IN EXCESS OF 5 MILLS ; AND SHALL THE EARNINGS ON THE INVESTMENT OF THE REVENUES FROM SUCH TAXES AND THE PROCEEDS OF SUCH DEBT REGARDLESS OF AMOUNT CONSTITUTE A VOTER-APPROVED REVENUE CHANGE AND BE COLLECTED, RETAINED AND SPENT BY THE TOWN IN 2013 AND EACH SUBSEQUENT COLLECTION YEAR NOTWITHSTANDING THE LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

and;

WHEREAS, the results of the Election were certified by the Town’s Election Commission on November 6, 2012; and

WHEREAS, pursuant to an application made by the Town to the Colorado Water Resources and Power Development Authority (the “Authority”), an instrumentality of the State, the Town has been awarded a loan in the principal amount of \$2,847,920 (the “Loan”) from the Drinking Water Revolving Fund administered by the Authority; and

WHEREAS, the Town Council hereby allocates the voted authorization obtained at the Election to finance the Project as follows:

Type of Voted Authorization Obtained at Election	Amount of Voted Debt Authorization Obtained at Election	Voted Authorization Allocated to Loan	Total Voted Authorization from Election Remaining
Water System	\$ 2,970,000	\$ 2,847,920	\$ 122,080
TOTALS	\$ 2,970,000	\$ 2,847,920	\$122,080

WHEREAS, \$847,920 of the Loan principal will be forgiven at closing, with the balance of \$2,000,000 to be evidenced by a governmental agency bond to be issued by the Town to the Authority; and

WHEREAS, the Bond shall constitute a special revenue obligation of the Town payable from a combination of ad valorem property tax revenue derived from a levy of up to 5 mills and the income and revenues derived from the operation and use of the Town's water system less reasonable and necessary current expenses of the Town of operating, maintaining and repairing the water system, all as more particularly described in the Loan Agreement; and

WHEREAS, after consideration, the Town Council has determined that incurring the indebtedness of the Loan, issuing the Bond to evidence such Loan, and executing the Loan Agreement in connection therewith is to the best advantage of the Town, its residents, water system users, and taxpayers; and

WHEREAS, the Town has an outstanding long-term obligation, which consists of an installment purchase contract payable to the Colorado Water Conservation Board (the "CWCB") currently outstanding in the principal amount of \$94,577 (the "CWCB Obligation"); and

WHEREAS, the CWCB Obligation is not secured by the Pledged Property; and

WHEREAS, other than the CWCB Obligation, the Town currently has no other long term indebtedness and the Town has no indebtedness whatsoever payable from the Pledged Property; and

WHEREAS, the form of the Loan Agreement and the Bond have been presented to the Town and made available to the Town Council and the public; and

WHEREAS, as provided in the Enabling Law, by this Ordinance the Town authorizes the indebtedness of the Loan, the issuance of the Bond to evidence the Loan, and the execution and delivery of and performance under the Loan Agreement; therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LARKSPUR, COLORADO:

Section 1. Definitions. The following terms shall have the following meanings as used in this Ordinance:

"Authority" means the Colorado Water Resources and Power Development Authority.

"Bond" means the governmental agency Bond to be issued by the Town to the Authority pursuant to the Loan Agreement, the form of which is set forth in Exhibit D to the Loan Agreement.

"C.R.S." means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

"CWCB" has the meaning set forth in the recitals hereof.

"CWCB Obligation" has the meaning set forth in the recitals hereof.

"Election" has the meaning set forth in the recitals hereof.

“*Enabling Law*” means the Town Charter; Title 31, Article 35, Part 4, C.R.S.; Title 11, Article 57, Part 2, C.R.S.; and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

“*Financing Documents*” means, collectively, the Loan Agreement and the Bond.

“*Loan*” has the meaning set forth in the recitals hereof.

“*Loan Agreement*” means the Loan Agreement between the Authority and the Town pursuant to which the Authority is to loan revenues from its Drinking Water Revolving Fund to the Town.

“*Pledged Property*” has the meaning set forth in the Loan Agreement and refers to the source of repayment of the Loan (as evidenced by the Bond).

“*Prime Rate*” means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

“*Project*” means the drilling of a new well; construction of a new water storage tank; expansion of a pump station; replacement of the existing pump; and the construction and acquisition of an iron and manganese removal system and pressure reducing valve, all as set forth in the Loan Agreement and as the Project may be later modified by determination of the Town Council.

“*Project Costs*” means the Town’s costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Enabling Law.

“*State*” means the State of Colorado.

“*System*” means the water system of the Town, as more particularly described in the Loan Agreement.

“*Town*” means the Town of Larkspur, Colorado.

“*Town Council*” means the Town Council of the Town, being the governing body of the Town.

Section 2. Approval of Loan Agreement and Authorization of Bond. Pursuant to and in accordance with the State Constitution and the Enabling Law, the Town shall incur the indebtedness of the Loan and the Bond, evidencing such indebtedness, shall be issued by the Town. The form of the Bond and the form of the Loan Agreement setting forth the terms, conditions and details of the Loan and the procedures relating thereto, are incorporated herein by reference and are hereby approved, and all Town officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Financing Documents. The Town shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the Town at or prior to this meeting of the Town Council with only such changes as are not inconsistent herewith; provided that such documents may be

completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered.

Section 3. Bond Details. The Bond shall be in an aggregate principal amount not to exceed \$2,847,920 (provided that the Bond shall state that \$847,920 of such amount is the subject of Principal Forgiveness, as described in the Loan Agreement, and the Town promises to pay the principal amount of \$2,000,000); shall bear interest at a rate of zero percent (0.0%) per annum; shall be subject to late charges on late payments as provided in the Loan Agreement; shall be payable semi-annually on May 1 and November 1 each year, commencing May 1, 2014; and shall mature not more than thirty years from the date of its issuance, all as more particularly set forth in the Loan Agreement. The Loan Agreement provides for a late charge (penalty interest rate) for any payment that is received by the Authority later than the tenth (10th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum.

Section 4. Pledge for Payment of the Bond. The Bond is a special revenue obligation of the Town and the principal of and interest thereon shall be payable solely from the Pledged Property (which term is defined in the Loan Agreement). The Town irrevocably pledges the Pledged Property for the payment of the Bond and the amounts due under the Loan Agreement. The Authority may not look to any other revenue, fund, or property of the Town, other than the Pledged Property, for the payment of the principal of or interest on the Bond, and the Bond shall not constitute nor shall it be considered or held to be a general obligation of the Town.

Section 5. Covenants, Findings and Determinations.

(a) The Town Council hereby allocates its voted debt authorization obtained at the Election to the indebtedness of Loan as provided in the recitals hereof and therefore, the issuance of the Bond is authorized under Article X, Section 20 of the Colorado Constitution.

(b) The indebtedness of the Loan was approved at the Election and therefore, the limitation on indebtedness set forth in Section 8.07 of the Town Charter does not apply to the issuance of the Bond.

(c) The Pledged Property is not pledged to the payment of any obligation of the Town other than the payment of the Bond, when issued.

(d) The Town Council hereby authorizes the undertaking and completion of the design, engineering, permitting, acquisition, installation and construction of the Project.

(e) The Town Council acknowledges that the approval and making of the Loan by the Authority is conditioned upon compliance with all mandatory TMF requirements specified in the letter from the Authority to the Town, dated October 8, 2013, and the Town Council hereby determines that ongoing compliance by the Town with such requirements and procedures with respect to the construction, acquisition,

installation and maintenance of the Project is necessary and appropriate and such procedures are hereby adopted.

(f) The construction, acquisition, installation and maintenance of the Project does not and will not interfere with the use of, nor in any way control private wells and the Town is therefore in compliance with the provisions of Section 10.02 of the Town Charter.

(g) The Town Council finds that Ordinance 5.29 approved by the Town Council in March of 2012, which established an increase of the Town's sewer rate effective January 1, 2014, is in full force and effect and has not been rescinded, amended, modified or supplemented in any material respect as of the date hereof.

Section 6. Approval of Miscellaneous Documents. The Mayor (or in the Mayor's absence the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by this Ordinance. Additionally, authorized officers and representatives as identified in Exhibit B to the Loan Agreement shall be Matt Krimmer, Town Manager and Town Clerk; Gerry Been, Mayor; and Shannon Buss, Mayor Pro Tem.

Section 7. Amendment of Ordinance. This Ordinance may be amended only with the prior written consent of the Authority.

Section 8. Limitation of Actions. The Town Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreement and to the issuance of the Bond. Pursuant to Section 11-57-212, C.R.S., no action or proceeding concerning the issuance of the Bonds shall be maintained against the Town unless commenced within 30 days after the date of passage of this Ordinance.

Section 9. Conclusive Recital. Pursuant to Section 11-57-210, C.R.S., the Bond shall contain a recital that it is issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Section 10. No Recourse Against Town Council Members, Officers and Agents. Pursuant to Section 11-57-209 C.R.S., if a member of the Town Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal or interest on the Bond. Such recourse shall not be available either directly or indirectly through the Town Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of the purchase by the Authority thereof, the Authority specifically waives any such recourse.

Section 11. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town Council or by the officers and employees of the Town directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 12. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 13. Ordinance Irrepealable. After the Bond has been issued, this Ordinance shall constitute a contract between the Authority and the Town, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged.

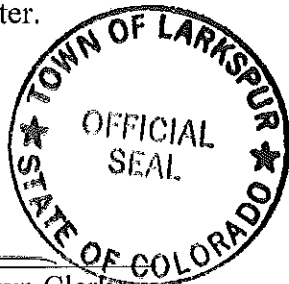
Section 14. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

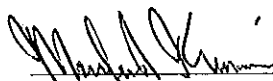
Section 15. Repealer. All orders, resolutions and ordinances of the Town, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 16. Effective Date. Pursuant to Section 3.14 of the Town Charter, this Ordinance shall take effect five (5) days after posting following final passage.

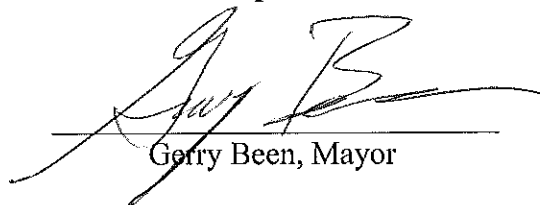
THIS ORDINANCE IS INTRODUCED, FINALLY PASSED, APPROVED AND ADOPTED this 19th day of December, 2013, and shall be posted in accordance with Section 3.20 of the Town Charter.

Attest:




Manfred Krimmer, Town Clerk

Town of Larkspur


Gerry Been, Mayor

STATE OF COLORADO)
)
 COUNTY OF DOUGLAS) SS.
)
 TOWN OF LARKSPUR)

The council (the "Town Council") of the Town of Larkspur, Douglas County, Colorado (the "Town") met in public, regular session in full conformity with all applicable laws; ordinances; rules; and the Home Rule Charter of the Town (the "Town Charter"); at the Town Hall, 9524 Spruce Mountain Road, Larkspur, Colorado, on Thursday, December __, 2013 at 6:00 p.m. Upon roll call, the following were found to be present, constituting a quorum:

Present:

	Mayor:	Gerry Been
	Council Members:	Lester Burch Matias Cumsille Joseph Jeske
Absent:	Mayor Pro-tem:	Shannon Buss
	Council Members:	Jennelle VanGorder Sandy McKeown

There were also present:

Town Manager/Clerk:	Manfred Krimmer
Town Attorney:	Scott Krob, Esq.

Thereupon, the following proceedings, among others, were had and taken. The following ordinance was then introduced, copies of which were distributed to each council member, whereupon the ordinance was read by title only (as authorized pursuant to Section 3.15(2) of the Town Charter because copies of the ordinance are available to the public):